

### ***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-3, 6, 7, and 10-20 are pending in the application, with claims 1 and 7 being the independent claims. Claims 1-3, 6, 7, and 10-20 are sought to be amended. Claims 4, 5, 8, 9, and 21 are sought to be canceled without prejudice to or disclaimer of the subject matter therein. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

### ***Comments Regarding Amendments to the Claims***

The Office Action at page three includes a comment that:

[r]egarding Claim 1, the weather-based decision system as claimed merely comprises a plurality of subsystems (filters, components, programs, code, etc.) **for** performing some action (e.g. "a confidence level filter *for* assigning a confidence level...") however the system does not actually perform the actions (assignments). For the purposes of examination examiner assumes the applicant will amend the claim to recite that THE weather-based system performs the actions/assignments (e.g., "a confidence level filter ~~for assigning~~ assigns a confidence level...").

Applicants have amended claim 1 and other effected claims to replace such phrases as "for assigning" with such phrases as "configured to assign". The latter phrases particularly point out and distinctly claim the subject matter which Applicants regard as their invention.

35 U.S.C. § 271(a) provides that (emphasis added): "[e]xcept as otherwise provided in this title, whoever without authority *makes*, uses, *offers to sell*, or *sells* any patented

invention, within the United States or *imports* into the United States any patented invention during the term of the patent therefor, infringes the patent."

Applicants contend that it is unlikely that anyone would make, offer to sell, sell, or import a system within the scope of the present invention in which a confidence level filter *assigns* a confidence level, but that it is likely that someone would make, offer to sell, sell, or import a system within the scope of the present invention in which a confidence level filter *is configured to assign* a confidence level. That is to say, amending the claims to replace such phrases as "for assigning" with such phrases as "assigns" would exclude anyone who made, offered for sale, sold, or imported a system within the scope of the present invention from committing an act of infringement *unless such system was operating* when such acts of making, offering for sale, selling, or importing occurred. Accordingly, amending the claims to replace such phrases as "for assigning" with such phrases as "configured to assign" is proper.

Other amendments to the claims are to correct antecedent basis and other errors.

### ***Rejections Under 35 U.S.C. § 103***

Claims 1-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0004780 to Smith *et al.* (hereinafter "Smith") in view of U.S. Patent No. 5,832,456 to Fox *et al.* (hereinafter "Fox"). (See Office Action at p. 3.)

Regarding claims 4, 5, 8, 9, and 21, Applicants have canceled these claims without prejudice to or disclaimer of the subject matter therein, thereby rendering these rejections moot.

Regarding claims 1-3, 6, 7, and 10-20, Applicants respectfully traverse these rejections.

Amended independent claim 1 recites (emphasis added):

A weather-based decision system for providing business recommendations based on a set of weather driven demand data, comprising:

a confidence level filter configured to assign *a first confidence level* to data within the set of weather driven demand data *based on a probability that a weather element forecast is accurate and a second confidence level* to said data within the set of the weather driven demand data *based on a strength of a correlation between a product or service being considered and one or more weather elements;*

an opportunity matrix filter coupled to said confidence level filter and configured to assign an opportunity level to said data within the set of weather driven demand data based upon said first confidence level and said second confidence level;

a weather decision point generator coupled to said opportunity matrix filter and configured to generate weather decision points;

a business rule recommendation engine coupled to said weather decision point generator and configured to provide a business recommendation; and

a business rules knowledge database coupled to said business rule recommendation engine and configured to contain business rules;

wherein the weather driven demand data indicates how a business activity is influenced by said one or more weather elements.

Neither Smith nor Fox, alone or in combination, discloses, teaches, or suggests a system having a confidence filter configured to assign *both a first confidence level*, based on a probability that a weather element forecast is accurate, *and a second confidence level*, based on a strength of a correlation between a product or service being considered and one or more weather elements. Therefore, amended independent claim 1 is patentable over Smith in view

of Fox. Claims 2, 3, 6, 10, and 11 depend upon claim 1 and are patentable over Smith in view of Fox because of this reason and because of their additional distinctive features.

Amended independent claim 7 recites (emphasis added):

A method of generating a business recommendation for a business activity based on one or more weather elements, comprising:

(a) receiving a weather element relationship for the business activity;

(b) receiving weather driven demand data for a set of time periods;

(c) ***assigning weather element relationship confidence levels*** for the weather driven demand data;

(d) ***assigning weather element forecast confidence levels*** for the one or more weather elements;

(e) assigning opportunity measures to data points within the weather driven demand data;

(f) identifying weather decision points based on the weather element relationship confidence levels, the weather element forecast confidence levels, and the opportunity measures associated with a weather driven demand data point; and

(g) applying business weather rules to the weather decision points identified in step (f), thereby generating the business recommendation;

wherein the weather driven demand data indicates how the business activity is influenced by the one or more weather elements.

Neither Smith nor Fox, alone or in combination, discloses, teaches, or suggests a method in which ***both weather element relationship confidence levels and weather element forecast confidence levels are assigned***. Therefore, amended independent claim 7 is patentable over Smith in view of Fox. Claims 12-20 depend upon claim 7 and are patentable over Smith in view of Fox because of this reason and because of their additional distinctive features.

Accordingly, Applicants request that the rejections under 35 U.S.C. § 103(a) be reconsidered and withdrawn for claims 1-3, 6, 7, and 10-20 and that these claims be passed to allowance.

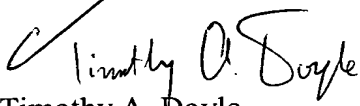
***Conclusion***

All of the stated grounds of rejection have been properly traversed or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

  
Timothy A. Doyle  
Attorney for Applicants  
Registration No. 51,262

Date: 6 MAR 06

1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600